



FIELD COURT TAX CHAMBERS

Accelerated payment notices¹

Is it time for Parliament to step in to counter unintended consequences of APNs?

Last month, following an address by Lord Reid, a question arose from the floor in response to his comments on the intention of Parliament as it applied to tax legislation. The questioner asked about the position of a client who ten years ago had made an investment in (for example) a film. Ten years later, the law has changed and he is required to make a substantial payment of tax. The payment is not of any assessed or determined liability; it is merely an amount demanded by HMRC just in case some tax might arise when the matter is finally adjudicated. However, the amount is large and he is made bankrupt. Five years later, when the substantive matter is adjudicated, he is found to be entitled to the relief. However, it is too late. He is bankrupt, his business has been lost, all his employees have been put out of work and there has been a seriously adverse effect on his family. He has broken no laws, he has paid the right amount of tax, but he has still been ruined.

The questioner asked whether these entirely foreseeable consequences could really have been the intention of Parliament. Lord Reid (no doubt wisely) declined to express a view.

HMRC are naturally keen to dissuade people from entering into avoidance arrangements which take advantage of reliefs or allowance which were not intended by Parliament. However, in this example the courts will have shown that the relief sought by the taxpayer was intended by Parliament, so why did the taxpayer have to be ruined?

It must be acknowledged that accelerated payment notices (APNs) are the law – and that is the end of it, although possibly the unfairness in some cases will be so grotesque that the courts will find a way to intervene.

However, it must also be acknowledged that there is a clear mischief which APNs are intended to address. I would suggest, though, that the retrospective nature of APNs overcooks this particular goose.

There could be little criticism if APNs were prospective and not retrospective. If the APNs operated from the date of their announcement, anybody becoming involved in an arrangement for the saving of tax which fell within the parameters of an APN would know exactly what they were in for and could not complain of burnt fingers. The APN would simply be part of the legal framework to which they must have regard when conducting their affairs.

That is quite different from saying that you did something perfectly lawful ten years ago but HMRC has now taken exception to it; and, whether it is right or wrong, it will make you bankrupt. This is much too close to the regimes which operate in some countries where those in government will penalise (or bankrupt, or worse) citizens with whom they disagree, without anything so tediously inconvenient as a legal process.

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We know that Parliament is sovereign and can enact any laws it chooses. There can be no question of its right to do so, nor of our absolute duty to adhere to those laws. However, sometimes the laws that Parliament chooses to enact can have wide ranging and unintended consequences. There would be no shame in Parliament acknowledging that APNs go rather further than it really intended and that some revision would be appropriate.

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